UNITED STATES PATENT AND TRADEMARK OFFICE

UNITED STATES DEPARTMENT OF COMMERCE
United States Patent and Trademark Office
Address: COMMISSIONER OF PATENTS AND TRADEMARKS
Washington, D.C. 20231
www.uspto.gov

APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/973,568	10/09/2001	Haralambos Mantzaridis	9013-34CT	7343

20792 7590 05/21/2002

MYERS BIGEL SIBLEY & SAJOVEC
PO BOX 37428
RALEIGH, NC 27627

EXAMINER
HINDENBURG, MAX F

ART UNIT	PAPER NUMBER
3736	

DATE MAILED: 05/21/2002

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.	Applicant(s)
09/973,568	Mantzaridis et al.
Examiner	**Art Unit**
Max Hindenburg	3736

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136 (a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

1) ☒ Responsive to communication(s) filed on *Oct. 9, 2001*.

2a) ☐ This action is **FINAL.** 2b) ☒ This action is non-final.

3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11; 453 O.G. 213.

Disposition of Claims

4) ☒ Claim(s) *1-4 and 7-19* is/are pending in the application.

4a) Of the above, claim(s) _____ is/are withdrawn from consideration.

5) ☐ Claim(s) _____ is/are allowed.

6) ☒ Claim(s) *1-4 and 7-19* is/are rejected.

7) ☐ Claim(s) _____ is/are objected to.

8) ☐ Claims _____ are subject to restriction and/or election requirement.

Application Papers

9) ☐ The specification is objected to by the Examiner.

10) ☐ The drawing(s) filed on _____ is/are a) ☐ accepted or b) ☐ objected to by the Examiner.

Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).

11) ☐ The proposed drawing correction filed on _____ is: a) ☐ approved b) ☐ disapproved by the Examiner.

If approved, corrected drawings are required in reply to this Office action.

12) ☐ The oath or declaration is objected to by the Examiner.

Priority under 35 U.S.C. §§ 119 and 120

13) ☒ Acknowledgement is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).

a) ☐ All b) ☐ Some* c) ☒ None of:

1. ☒ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

*See the attached detailed Office action for a list of the certified copies not received.

14) ☐ Acknowledgement is made of a claim for domestic priority under 35 U.S.C. § 119(e).

a) ☐ The translation of the foreign language provisional application has been received.

15) ☐ Acknowledgement is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

Attachment(s)

1) ☐ Notice of References Cited (PTO-892)
2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
3) ☒ Information Disclosure Statement(s) (PTO-1449) Paper No(s). 6
4) ☐ Interview Summary (PTO-413) Paper No(s). _____
5) ☐ Notice of Informal Patent Application (PTO-152)
6) ☐ Other:

1. The disclosure is objected to because of the following informalities: there are no section headings throughout the disclosure.

Appropriate correction is required.

2. Claims 7, 8 and 10 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention. Claims 7 and 19 are indefinite in that they depend from canceled claims. Claim 8 is indefinite in that it is unclear exactly what is being claimed by "according to the above...". Applicant should clearly claim each and every element and method step.

3. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

> (a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negatived by the manner in which the invention was made.

4. Claims 1-4, 7, 9 and 11-18 are rejected under 35 U.S.C. 103(a) as being unpatentable over John '467 in view of Webb et al. John '467 teach a method and system for calculating an index indicative of anaesthetic depth of a patient as claimed by applicant including subjecting the patient to a repetitive audio stimulus, monitoring evoked electrical signals via an EEG produced by the patient in response to the auditory stimulus, providing a signal of the coarseness of the signals and using the signals as an index indicative of the anaesthetic depth. John '467 doesn't say the auditory evoked potentials (AEP) are what is monitored. Webb et al. teach that auditory evoked

potentials can be monitored in EEG signals. It would have been obvious to one of ordinary skill in the art, in view of Webb et al., to monitor the AEP signals of the patient from the EEG signals, if they already are not, to monitor the depth of anaesthesia. It would have been an obvious engineering design choice to then monitor the AEP signals in sweeps or frames and manipulate the data as desired to obtain the best readings of the AEP to determine anaesthetic depth of the patient, i.e. time averaging the sweeps and producing digitized AEP signals.

5. Claims 8 and 10 are rejected under 35 U.S.C. 103(a) as being unpatentable over John '467 in view of Webb et al. as applied to the claims above, and further in view of Cosgrove et al. John '467 and Webb et al. are discussed above. Cosgrove et al. teach a closed loop control of supplying a dosage to a patient by EEG feedback signal. It would have been obvious, in view of Cosgrove et al., to use such an EEG feedback signal with John '467 to automatically control the supply of the dosage of anaesthesia to the patient to keep the patient at a desired anaesthetic depth.

6. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. .

7. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Mr. Hindenburg whose telephone number is (703)308-3130.

MH

May 16, 2002

Max Hindenburg
Primary Examiner